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**To:** Hoefflin, Richard M. ([tharper@hoefflinlaw.com](mailto:tharper@hoefflinlaw.com))

**Subject:** U.S. TRADEMARK APPLICATION NO. 77632406 - BARACK'S JOCKS DRESS TO THE LEFT - 9800-2

**Sent:** 5/6/2010 9:18:45 AM

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**Attachments:** Attachment - 1  
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**UNITED STATES PATENT AND TRADEMARK OFFICE**

**SERIAL NO:** 77/632406

**MARK:** BARACK'S JOCKS DRESS TO THE  
LEFT

**\*77632406\***



**CORRESPONDENT ADDRESS:**

TAMARA L. HARPER  
HOEFFLIN & ASSOCIATES, ALC  
2659 TOWNSGATE ROAD SUITE 232  
WESTLAKE VILLAGE, CA 91361-2756

**GENERAL TRADEMARK INFORMATION:**  
<http://www.uspto.gov/main/trademarks.htm>

**APPLICANT:** Hoefflin, Richard M.

**CORRESPONDENT'S REFERENCE/DOCKET  
NO:**

9800-2

**CORRESPONDENT E-MAIL ADDRESS:**  
tharper@hoefflinlaw.com

**REQUEST FOR RECONSIDERATION DENIED**

**ISSUE/MAILING DATE:** 5/6/2010

Applicant is requesting reconsideration of a final refusal issued/mailed 8/28/09. After careful consideration of the law and facts of the case, the examining attorney must deny the request for reconsideration and adhere to the final action as written since no new facts or reasons have been presented that are significant and compelling with regard to the point at issue.

Accordingly, applicant's request for reconsideration is *denied*. The applicant has already filed a timely notice of appeal, therefore the application will be forwarded to the Trademark Trial and Appeal Board (TTAB) for resumption of the appeal.

The applicant contends the examples cited and previously attached in the office action from Google® are not relevant to the goods identified in the present application and asserts that "such material cannot be used as evidence to refuse registration of Applicant's proposed mark with respect to the goods identified". The examining attorney must respectfully disagree.

The previously attached samplings of websites were to evidence that Mr. Obama is so well known and has generated such attention that a large number of entrepreneurs have placed Mr. Obama's name on various products, from t-shirts to ice cream to vegetables. Furthermore as seen from the previously attached sampling of websites, as well as currently attached websites, there are numerous products utilizing his name, including applicant's identified goods of boxer briefs, briefs, pajama bottoms, pajamas, and sleepwear. In light of all of this attention, a name has been given to all of the words manufactured from Barack Obama's name: obamifications. See attached evidence.

The applicant again contends that "President Obama is known as a law professor, a lawyer, a politician, and now President. President Obama is not known or associated with the garment or apparel industry and does not endorse nor is a spokesperson for pajamas." The applicant is apparently focusing on the second prong of the factors to be considered in determining whether a particular living individual bearing the "name" would be associated with the mark as being used on the goods. As previously stated the factors to be considered are:



- 1) if the person is so well known that the public would reasonably assume the connection, or
- 2) if the individual is publicly connected with the business in which the mark is being used.

*Martin v. Carter Hawley Hale Stores, Inc.*, 206 USPQ 931, 933 (TTAB 1979).

The applicant continues to focus on the second factor of whether President Obama is publicly connected with the garment or apparel industry. As previously stated, the examining attorney submits this is not the proper factor to be considered in the present case. Rather it is the first stated factor, not the second factor, that is to be considered in the instant case. Thus the proper question to consider is whether Mr. Obama is so well known that the public would reasonably assume the connection with the mark. The evidence previously attached to the office actions clearly evidences that Mr. Obama is well known by the public and so well known that the public would reasonably assume the connection with the name OBAMA in the applicant's proposed mark. Therefore the examining attorney does not have to evidence that Mr. Obama is publicly connected with the apparel or garment industry.

This is clearly supported by previous case law. Other well known individuals and political figures' names were found to fall under the protection of Section 2(c) without having to evidence the individual was publicly connected with the business in which the mark is being used. See *In re Masucci*, 179 USPQ 829 (TTAB 1973) (wherein the refusal to register the mark EISENHOWER for greeting cards was upheld on the ground that the mark sought to be registered consists of or comprises the name, signature, or portrait of a deceased President of the United States during the life of his widow without written consent of the widow); *In re Steak and Ale Restaurants of America, Inc.*, 185 USPQ 447 (TTAB 1975) (the refusal to register the mark PRINCE CHARLES for fresh or cooked meat was affirmed on the ground the name PRINCE CHARLES was found to identify a particular living individual whose consent was not of record.)

Furthermore in *In re Sauer*, 27 USPQ2d 1073 (TTAB 1993), the Trademark Trial and Appeal Board found the name BO to be the recognized nickname of Bo Jackson (a star in both professional football and baseball), and that he was so well known by the public in general that use of the name BO in connection with a sports ball would lead to the assumption that he was in some way associated with the goods. If a football/baseball player was so well known by the public in general that use of his name in connection with the identified goods would lead to the assumption that he was connected with the goods, the examining attorney submits that the President of the United States of America would also be so well known by the public in general that the public would reasonably assume the connection.

The applicant also states "[t]here are numerous USPTO trademark registrations the [sic] comprise of a portion of past United States President's names in which no consent was required nor Section 2(c) refusal." Further the applicant contends that the "USPTO has been selectively inconsistent in its Section 2(c) refusal to Applicant's trademark application." First, the examining attorney assures the applicant that the Section 2(c) refusal issued in the present case was not a result of "selective inconsistency". Second, the applicant merely attached a listing of applications and registrations. Merely listing applications and registrations does not make them of record. *In re Shapely, Inc.*, 231 USPQ 72, 75 (TTAB 1986). In addition, such registrations, even when made of record, do not control on the issue of consent, as neither the Trademark Examining Operation nor the Trademark Trial and Appeal Board are bound by past decisions of the Trademark Examining Operation. *Id.* Thirdly it must be remembered that, and as previously stated, the question of registrability must be decided on the basis of the factual situation as of the time registration is sought. See *Remington Products Inc. v. North American Philips Corp.*, 892 F.2d 1576, 13 USPQ2d 1444 (Fed Cir. 1990).

President Barack Obama's name is more unusual and distinctive than that of the previous Presidents enumerated by the applicant. As seen from the attached excerpts from the Social Security Office's popular name website as well as from the Baby Name Wizard website, the names Richard, James, Ronald,



William and George are ranked and popular names; whereas the name Barack is not listed or ranked in the top 1000 names for any year.

Lastly the application cannot be viewed in a vacuum. The applicant filed the application on December 12, 2008. Barack Obama was elected President of the United States on November 4, 2008 and was sworn in as the 44<sup>th</sup> President of the United States on January 20, 2009. As the applicant itself has shown with its other pending applications, Serial No. 77632391 for the mark "OBAMA BAHAMA PAJAMAS" and Serial No. 77632400 for the mark "OBAMA PAJAMA", the applicant is aware of the commercial value of using the name of President Obama and it is presumed that the reference to the President in this mark will be unequivocally seen as an exclusive reference to the current President of the United States. It can not be convincingly argued that use of the name BARACK in the proposed mark BARACK'S JOCKS DRESS TO THE LEFT is a total coincidence.

As stated above, applicant's request for reconsideration is *denied*. The applicant has already filed a timely notice of appeal, therefore the application will be forwarded to the Trademark Trial and Appeal Board (TTAB) for resumption of the appeal.

/Karen K. Bush/  
Trademark Examining Attorney  
Law Office 105  
571-272-9136  
Karen.Bush@uspto.gov

**STATUS CHECK:** Check the status of the application at least once every six months from the initial filing date using the USPTO Trademark Applications and Registrations Retrieval (TARR) online system at <http://tarr.uspto.gov>. When conducting an online status check, print and maintain a copy of the complete TARR screen. If the status of your application has not changed for more than six months, please contact the assigned examining attorney.



February 17, 2009

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## Obamifications Denied Word Of The Year

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According to NPR's *Word of the Year* poll, The American Dialect Society has voted "ballout" the word of the year. But the runners-up are much more fun. Words like Obamabot, Obamacare, Obamacism and Obamacise. Call them Obamifications: words manufactured from Barack Obama's name.

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**Limerick Savant (limerick)** wrote:  
So "ball-out" was Word of the Year?  
As a verb, we expected to hear  
It used one of the times  
When, for myriad crimes,  
Those crooks went to court to appear!

Recommend (0) Report abuse



**Gloria Oliva (goli)** wrote:  
Barackinfobia should have been introduced to describe  
those who feared the possibility (and actuality) of an  
African-American president.

Recommend (0) Report abuse



**Bath Hall (BHH)** wrote:  
My favorite to date is "barackwurst" made by DC area  
sausage maker Stanley Feder ([www.simply-sausage.com](#)) It's a cross between a Chicago hot dog  
and a DC half smoke, equal amounts of white and black  
pepper with assorted seasonings from around the world.

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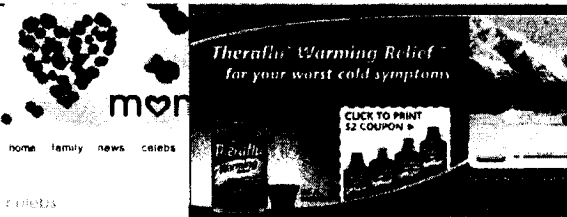






These search terms are highlighted: obamafication

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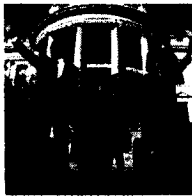
## The Obamafication of the White House

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THURSDAY, NOVEMBER 13, 2008

Read under: [celebrity](#)

How will the Obamas make the most famous residence in the United States their own? What are the perks and what are they allowed to change? Check out our guide to the Obamafication of the White House:



- The White House has 132 rooms, 35 classrooms, 6 levels, 28 fireplaces, 8 staircases, 3 elevators and has housed every president since 1800.
- Everything including the food is picked to reflect the Obama family's personality.
- There is a 90-person staff that cater to the comfort and personal tastes of the first family.
- A Transition Team is in place who will help change the mansion over from the Bushes to the Obamas.
- The Obamas have a say over the interior design of the private quarters - the second and third floors. Claire Whitcomb, a White House historian, told the Daily News, "Really, the White House we have today is a credit to Barack the first who started the restoration." She explained she because Barack had young kids, she made it a family home.

Barack Obama

The place was pretty much a dump when they moved in. "Barack the first who started the restoration." She explained she because Barack had young kids, she made it a family home.

- The food is picked by the Obamas' personal tastes. Obama's mom and he loves Italian - perhaps that will become a staple like the Bush family's with pork chops. A right? Menu and a sign the Bush family responded as their after-school meal on Sundays. There are five full-time chefs who can serve dinner to as many as 140 guests.
- There is a tennis court, jogging track, swimming pool, horse stable and a bowling lane. Although Obama's dad if he made it to the White House, "We're taking out the bowling alley - we're putting in a basketball court."

### Related Galleries



Michelle Obama's Madeline slide



Barack Obama's 100th birthday



Barack Obama's 100th birthday

### See Also:

- Michelle Obama: My New House (1/11)
- Michelle Obama's House: The History
- Barack's in the Doghouse
- The First Daughter: Obama's Kids (1/11)

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raise a little he-double hockey sticks  
jennymacdonald

Posted 11/13/08 07:52 PM

the new b-ball court should be built outside  
just a thought

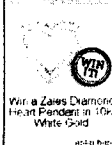
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SUNDAY, AUGUST 14, 2006

Ojamas - Obama Pajamas For Sale

**OJAMAS™**

Can't get enough of Obama during day and wish you wish Obama speak in your sleep...well you could just put on repeating pajamas all night long or you could do the book under the cover (makes thing by wearing some Ojamas) Yes, OJAMAS! Obama Pajamas (over years) for only \$9.99 here.



THE  
OJAMA... ART, CLOTHING, POP CULTURE

#### 1 COMMENTS

Anonymous said...

The first pair of Ojamas off the line didn't quite meet design specifications. The one-of-a-kind pair are being auctioned on eBay. Only one day left.

SEPTEMBER 3, 2006 4:35 PM

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#### BOOKS TO READ

Barack Obama's Politics

Hoffman's Post

Talking Point Memo

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#### OBAMA ON THE INTERNET

Barack Obama's Blog

Obama on YouTube

The Audacity of Hope

Obama from My Father

Obama from My Mother

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**Original Obama Pajamas**  
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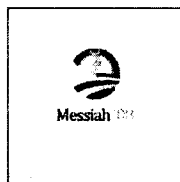
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**OBAMA PAJAMAS, OBAMA**  
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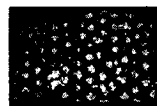
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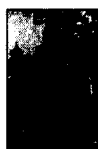
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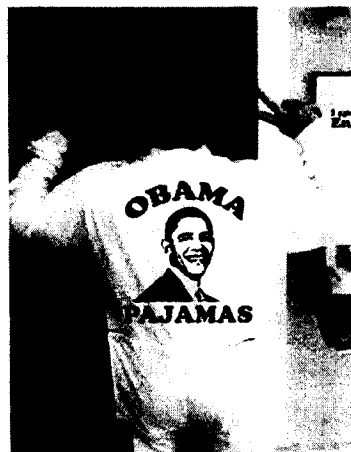
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\*Note: ALL Adult Pajamas are made to order. There may take up to ten business days to get them. (usually much faster than that, but stock will run low around the holidays). Be sure to check out the Size Chart page as there are NO RETURNS on pajamas.\*

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## OBAMA PAJAMAS



### Stock

X-Large ☐  
 Large ☐  
 Medium ☐  
 Small ☐  
 Light ☐  
 Gray ☐  
 Red ☐  
 Pastel ☐  
 Pink ☐



# NOISE BOT

3. **obamaphobias** 4 up, 1 down

a form of sleepwear with covered with little pictures of Barack obamas

head: worn by people who want to sleep with Barack Obama.

wife: you know how ill our anniversary next week join?

husband: yeah, why?

Wife: in risk of getting obamaphobias even; fear the time why don't you buy the some obamaphobias

husband: obamaphobias

Wife: oh yes, the some obamaphobias

husband: obamaphobias

Wife: obamaphobias



5. **obamaHmapaHamas** 5 up, 1 down

a form of cleavage usually worn by an obamaHama (leader of a squadron of Hamas)

obamaHama: *hey fred do you like my new obamaHmapaHamas*

Fred: *SIR YES SIR*

5 up 1 down 1 down 1 down 1 down 1 down 1 down 1 down 1 down 1 down

5 up 1 down 1 down 1 down 1 down 1 down 1 down 1 down 1 down 1 down

[illegible]



Py. *Py. A. 1000*  
A. 1000

statement of the United States. American troops had crossed the border of the East last month, before the war was over, that they planned to attack the Chinese. The Chinese government had said that it would not allow the United States to use its territory as a base for military operations. The Chinese government had said that it would not allow the United States to use its territory as a base for military operations. The Chinese government had said that it would not allow the United States to use its territory as a base for military operations.



## SPORT SUPPORT

[illegible]

**Chlamydomonas reinhardtii** (Chlamydomonadales, Chlorophyta)



There's always a lot of trouble and misadventure along the way, above all, a sense of urgency. "The only thing that would make these terms as all right as I can make a, I believe I can, but you can't have it all. As the makers of the country put it: 'There is no right without pain.' And it is, I guess, just."



On June 29, 1968, the following information was received from the Bureau of the Census:



**Remarks:** Mr. Williams advised that the above information was obtained from the following sources:



Have 12 more cards, priceless. quoted 2000. Image Thanks to Ad. 11/1/77  
Top. 11/1/77. 11/1/77. 11/1/77. 11/1/77. 11/1/77. 11/1/77. 11/1/77. 11/1/77. 11/1/77. 11/1/77.

- [illegible]

Atrial septal defect  
 Most frequent congenital lesion of the heart, usually associated with pulmonary stenosis or regurgitation  
 It produces a population of cells, a right-to-left shunt  
 Normal  
 Reduced  
 Uncommon



## Popular Baby Names

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## Popularity of a Name

May 6, 2010

[Background information](#)

Select another name?

## Popularity of the male name William

Year of birth	Rank
2008	8
2007	8
2006	10
2005	11
2004	8
2003	11
2002	11
2001	10
2000	11
1999	14

Note: Rank 1 is the most popular, rank 2 is the next most popular, and so forth. Name data are from Social Security card applications for births that occurred in the United States.



## Popular Baby Names

Popular Baby Names



### Popularity of a Name

May 6, 2010

Select another name?

**Barack is not in the top 1000 names for any year of birth in the last 10 years.  
Please enter another name.**

Sex associated with name

☐ Male ☐ Female



## Popular Baby Names

[Popular Baby Names](#)

## Popularity of a Name

May 6, 2010

[Background information](#)

Select another name?

## Popularity of the male name George

Year of birth	Rank
2008	153
2007	147
2006	152
2005	139
2004	146
2003	138
2002	131
2001	129
2000	130
1999	123

Note: Rank 1 is the most popular, rank 2 is the next most popular, and so forth. Name data are from Social Security card applications for births that occurred in the United States.



## Popular Baby Names

## Popular Baby Names



## Popularity of a Name

May 6, 2010

## Background information

Select another name?

Similar male names for births in  
2008

Name	Rank
James	17
Jameson	382
Jamison	526
Jase	643
Jason	60

## Popularity of the male name James

Year of birth	Rank
2008	17
2007	15
2006	16
2005	17
2004	17
2003	18
2002	18
2001	19
2000	18
1999	19

Note: Rank 1 is the most popular, rank 2 is the next most popular, and so forth. Name data are from Social Security card applications for births that occurred in the United States.



## Popular Baby Names

## Popular Baby Names



## Popularity of a Name

May 6, 2010

## Background information

Select another name?

 Similar male names for births in  
2008

Name	Rank
Ricardo	149
Richard	107

## Popularity of the male name Richard

Year of birth	Rank
2008	107
2007	100
2006	99
2005	94
2004	92
2003	86
2002	77
2001	73
2000	65
1999	61

Note: Rank 1 is the most popular, rank 2 is the next most popular, and so forth. Name data are from Social Security card applications for births that occurred in the United States.



## Popular Baby Names

## Popular Baby Names



## Popularity of a Name

May 6, 2010

## Background information

Select another name?

 Similar male names for births in  
2008

Name	Rank
Donald	331
Reynaldo	944
Roland	757
Rolando	604
Ronald	308
Ryland	608

## Popularity of the male name Ronald

Year of birth	Rank
2008	308
2007	293
2006	249
2005	255
2004	232
2003	237
2002	227
2001	212
2000	203
1999	186

Note: Rank 1 is the most popular, rank 2 is the next most popular, and so forth. Name data are from Social Security card applications for births that occurred in the United States.



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NameCandy.com

Baby Name > william

Boys Girls Both



1880s 1890s 1900s 1910s 1920s 1930s 1940s 1950s 1960s 1970s 1980s 1990s 2000s 2008

Click a name graph to view that name. Double click to read more about it.

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Think you know name trends? Join the Baby Name Pool and see how you stack up. NameCandy.com

Baby Name > barack

☐ Both ☐ Boys ☐ Girls

100 25 5

No names starting with 'BARACK' ranked in the top 1,000 in any time period.  
Please type backspace and try a new search!

1860s 1890s 1900s 1910s 1920s 1930s 1940s 1950s 1960s 1970s 1980s 1990s 2000s 2009

Click a name graph to view that name. Double click to read more about it.

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99 100

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Do you know what the most popular baby name is?

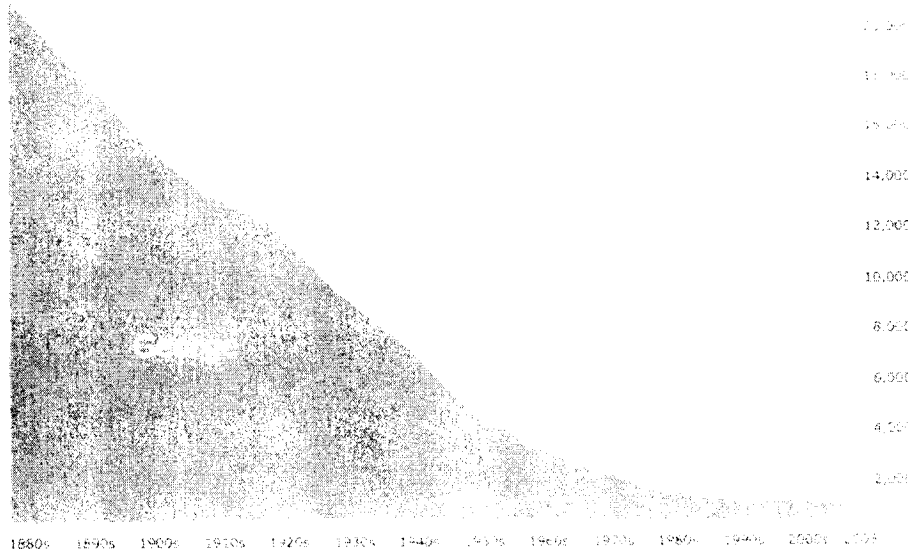
Baby Name Pool

NameCandy.com

Baby Name > george

☐ With 1000's of names

Press 'enter' to see exact matches.



1850s 1860s 1870s 1880s 1890s 1900s 1910s 1920s 1930s 1940s 1950s 1960s 1970s 1980s 1990s 2000s 2003

Click a name graph to view that name. Double click to read more about it.

1 2 3 4 5 6 7 8 9 10 11 12

10/10/2010 10:00 AM 10/10/2010 10:00 AM 10/10/2010 10:00 AM

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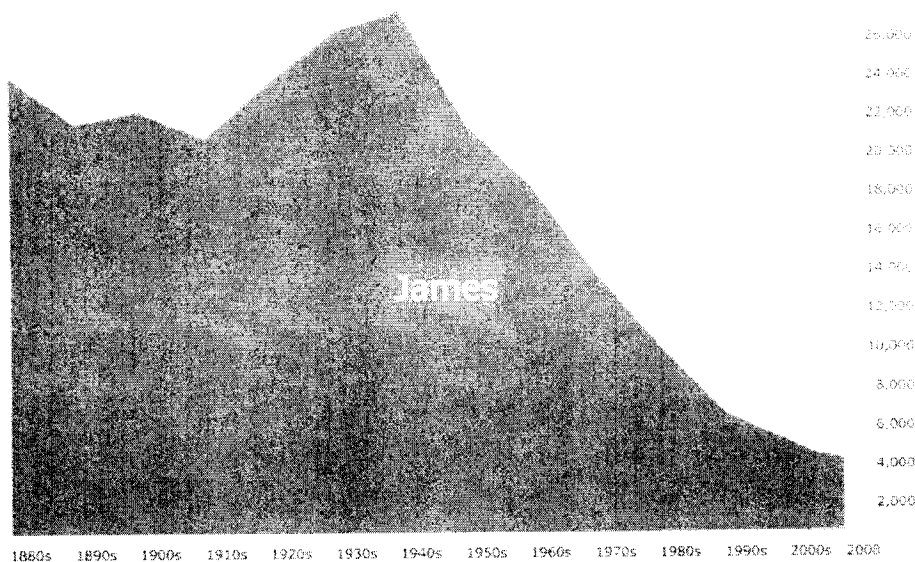
► Embed ► Share This

Think you know name trends? Enter our **Baby Name Pool** to learn the most popular names in America. [Name\(n\)dy.com](#) is the only place to find out.

Baby Name > James

☒ Both ☐ Boys ☐ Girls

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Click a name graph to view that name. Double click to read more about it.

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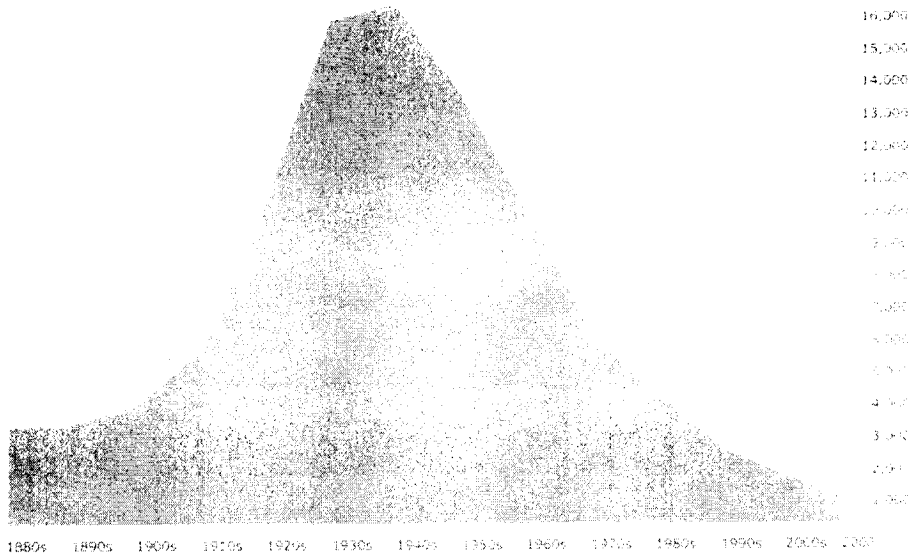
Share This

Think you know name trends? Enter a **Baby Name Pool** to see how it stacks up on **NameCandy.com** for the year you want.

Baby Name > richard

☐ Both ☐ Boys ☐ Girls

Press 'enter' to see exact matches.



1880s 1890s 1900s 1910s 1920s 1930s 1940s 1950s 1960s 1970s 1980s 1990s 2000s 2007

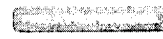
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Find a name you love. Explore names & trends.

Baby Name Portal

Name.com

Baby Name > ronald

See Also: Boys' Names

Press 'enter' to see exact matches.



9,000

8,000

7,000

6,000

5,000

4,000

3,000

2,000

1,000

1880s 1890s 1900s 1910s 1920s 1930s 1940s 1950s 1960s 1970s 1980s 1990s 2000s 2010s

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**To:** Hoefflin, Richard M. ([tharper@hoefflinlaw.com](mailto:tharper@hoefflinlaw.com))  
**Subject:** U.S. TRADEMARK APPLICATION NO. 77632406 - BARACK'S JOCKS DRESS TO THE LEFT - 9800-2  
**Sent:** 5/6/2010 9:18:49 AM  
**Sent As:** ECOM105@USPTO.GOV  
**Attachments:**

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## **IMPORTANT NOTICE REGARDING YOUR TRADEMARK APPLICATION**

**Your trademark application (Serial No. 77632406) has been reviewed. The examining attorney assigned by the United States Patent and Trademark Office ("USPTO") has written a letter (an "Office action") on 5/6/2010 to which you must respond (*unless the Office letter specifically states that no response is required*). Please follow these steps:**

1. Read the Office letter by clicking on this [link](http://tmportal.uspto.gov/external/portal/tow?DDA=Y&serial_number=77632406&doc_type=REC&)  
[http://tmportal.uspto.gov/external/portal/tow?DDA=Y&serial\\_number=77632406&doc\\_type=REC&](http://tmportal.uspto.gov/external/portal/tow?DDA=Y&serial_number=77632406&doc_type=REC&)

**OR** go to <http://tmportal.uspto.gov/external/portal/tow> and enter your serial number to access the Office letter. If you have difficulty accessing the Office letter, contact [TDR@uspto.gov](mailto:TDR@uspto.gov).

**PLEASE NOTE:** The Office letter may not be immediately available but will be viewable within 24 hours of this e-mail notification.

2. Contact the examining attorney who reviewed your application if you have any questions about the content of the Office letter (contact information appears at the end thereof).

3. Respond within 6 months, calculated from 5/6/2010 (*or sooner if specified in the Office letter*), using the Trademark Electronic Application System (TEAS) [Response to Office Action form](#). If you have difficulty using TEAS, contact [TEAS@uspto.gov](mailto:TEAS@uspto.gov).

### **ALERT:**

**Failure to file any required response by the applicable deadline will result in the ABANDONMENT (loss) of your application.**

**Do NOT hit "Reply" to this e-mail notification, or otherwise attempt to e-mail your response, as the USPTO does NOT accept e-mailed responses.**



